

(2007) 06 AP CK 0079

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17598 of 1998

Ravindra Yadav

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-06-2007

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5(1)
Central Reserve Police Force Act, 1949 — Section 11(1)
Central Reserve Police Force Rules, 1955 — Rule 27
Constitution of India, 1950 — Article 226, 227, 311

Citation : (2007) 5 ALD 527

Hon'ble Judges : G.S. Singhvi, C.J

Bench : Single Bench

Advocate : G. Suvarna Kumari, for J.V. Prasad, for the Appellant; S.S. Varma, Additional Standing Counsel for Central Government, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, C.J.—In this petition filed under Article 226 of the Constitution of India, the petitioner has prayed as under:

It is prayed that this Hon''ble Court may be pleased to issue a writ of mandamus or any other appropriate writ or order or direction in the nature of a writ, declaring the order of the 3rd respondent in NO. R. XHI 17/97-ESTT.3 dated 10-3-1998, confirming the date of order of the 4th respondent in P.VIII/17/96-90 ECU dated 14-7-1997, dismissing the petitioner from service, as highly illegal, irregular, improper, arbitrary and as made in violation of Article 311 of Constitution of India and the violative of principles of natural justice and in any event as being grossly disproportionate to the charges alleged and to set-aside the same and to consequently direct the respondents to reinstate the petitioner into service with all consequential benefits with full back wages etc.

For deciding whether the petitioner is entitled to the above noted relief, it will be useful to notice the relevant facts. The same are as under:

(1) The petitioner is a native of Uttar Pradesh. He passed 10th class in 1983 as a student of Devrishi High School, Devlas, Ajamgarh, Uttar Pradesh. Thereafter, he is said to have shifted to the State of Gujarat.

(2) In April, 1988, the petitioner took part in the test conducted by Central Reserve Police Force (for short, "the CRPF") at Ahmedabad for recruitment of constables from the domiciles of Gujarat. On being recommended by the competent authority, he was enlisted as a constable on 20-4-1988 and posted at Hyderabad.

(3) On receipt of a complaint that a large number of constables had obtained employment by producing fake Domicile Certificates of Gujarat, respondent No. 4 - Commandant, 90 Bn., CRPF, Hyderabad requested Deputy Commissioner of Police, Special Branch, Ahmedabad City to verify the correctness of the Domicile Certificates produced by 17 candidates including the petitioner. The concerned Deputy Commissioner of Police vide his letter dated 9-2-1989 informed respondent No. 4 that all the certificates except the one issued in favour of Rathore Amar Singh Gendalal were fake. For the sake of proper appreciation of the issue raised by the petitioner, the true translation of letter dated 9-2-1989 is reproduced below:

Please refer your letters under references on the subject mentioned above.

A detailed statement are enclosed herewith. Only Rathore Amar Singh Gendalal has applied for domicile Certificate. He was issued Domicile Certificate by the D.C.P., Special Branch, Shri K. Kumaraswamy are valid certificate. Commissioner of Police has empowered D.C.P., Special Branch to issue domicile certificates. Other Domicile Certificates are compared with our office record and found that they are not issued by this office and are fake certificates.

It is found fake you may proceed for legal action.

(4) Thereafter, respondent No. 4 directed that services of the petitioner and 12 other constables be terminated under Rules 5(1) of the Central Civil Services (Temporary Service) Rules, 1965 (for short, "the 1965 Rules"). Accordingly, the Assistant Commandant of the Battalion issued order dated 12-5-1989, whereby he terminated the services of the petitioner and Ors. by paying them one month's salary and allowance in lieu of notice. On appeal, Inspector General, CRPF, Hyderabad set aside the termination of petitioner's service and ordered his reinstatement by observing that the Assistant Commandant was not competent to do so. In compliance of the appellate order, the petitioner was taken back on duty with effect from 13-12-1989. After ten days, respondent No. 4 issued order dated 23-12-1989, whereby he again terminated the petitioner's service under Rule 5(1) of the 1965 Rules.

(5) The petitioner challenged the second termination of his service in Writ Petition No. 5403 of 1990, which was allowed by a learned Single Judge of this Court on the ground of violation of the rules of natural justice. However, liberty

was given to the competent authority to pass fresh order after complying with the rules and principles of natural justice.

(6) As a sequel to quashing of the termination of his service, the petitioner was reinstated as constable on 28-9-1996. After about one month, he was served with memo dated 23-10-1996 for holding an enquiry under Rule 27 of the Central Reserve Police Force Rules, 1955 (for short, "the 1955 Rules") on the following charge:

That, constable No. 880907664 Ct (GD) Ravindra Yadav committed an offence of misconduct in his capacity as a member of the Force u/s 11(1) of C.R.P.C. Act, 1949 in that he produced fake domicile certificate of Gujarat State at the time of enlistment and got enrolled himself against the quota meant for Gujarat State on 25-4-1988 which is prejudicial to good order and discipline of the Force.

(7) Shri P.B. Sharma, (Second-in-Command), who was appointed as Enquiry Officer, submitted report dated 20-3-1997 with the finding that the charge levelled against the delinquent has been proved. For the sake of convenient reference, the true translation of the relevant portions of the enquiry report is extracted below:

As per the statement of Prosecution Witness Assistant Sub-Inspector V. Vara Prasad, the Recruitment which was conducted during April, 1988 at Ahmedabad was meant for the Domicile Candidates from the Gujarat State only. The Delinquent himself admitted that he enrolled in CRPF from the quota of Gujarat State and submitted the domicile certificate in support of his domiciliary status as demanded at the time of recruitment. From the above facts, it is evident that the Recruitment conducted at Ahmedabad/Gandhinagar during April, 1988 was meant for the Candidates who are originally belong to Gujarat State only.

The Delinquent has submitted so many documents in his defence which includes the certificate of permanent resident. On verification of all the documents produced by the delinquent, it has not been proved that he has been residing in the State of Gujarat for the last 10 years. The delinquent passed his 10th class during 1983 from Uttar Pradesh as a regular student, which clearly indicates that he came to Gujarat after 1983. The Certificate issued by the Municipal Commissioner, Ahmedabad, also confirms that he came to Gujarat after 1983. After verifying the Domicile Certificate produced by the Delinquent, the Police Commissioner, Ahmedabad, Gujarat vide their letter No. FB/DOM/8/89 and FB/DOM/8/89/1996/37 32 has categorically clarified that the same was not issued by their office and same is a fake one. It is also clarified that no Certificate of permanent residence was issued to the Delinquent by their office.

The Delinquent on 13-3-1996 had again requested to grant permission to produce some documents in his defence. The same was accepted and the delinquent submitted an attested copy of Certificate issued by the City Mamladar that the Delinquent was residing in the State of Gujarat since last 5 years.

From the above, it does not establish that the Certificate of Permanent Residence submitted by him at the time of recruitment was not a fake one. The DCP Spl. Branch clarified that the certificate sent for verification was a fake one and the same was not issued by their office. Hence the Article of Charge "That, the said No. 880907664 CT (GD) Ravindra Yadav committed an offence of misconduct in his capacity as a member of the Force u/s 11(1) of C.R.P.C. Act, 1949 in that he produced fake domicile certificate of Gujarat State at the time of enlistment and got enrolled himself against the quota meant for Gujarat State on 25-4-1988 which is prejudicial to good order and discipline of the Force" framed against the delinquent proved beyond doubt.

(8) A copy of the enquiry report was furnished to the petitioner on 16-6-1997. He submitted reply dated 28-6-1997 and reiterated that he was innocent. After considering the same, respondent No. 4 passed order dated 14-7-1997, whereby he dismissed the petitioner from service.

(9) The appeal preferred by the petitioner was dismissed by Deputy Inspector General of Police, CRPF, Hyderabad (respondent No. 3 herein) vide his order dated 10-3-1998.

3. Smt. G. Suvama Kumari, learned Counsel for the petitioner argued that orders dated 14-7-1997 and 10-3-1998 passed by respondent Nos. 4 and 3 respectively are liable to be quashed because the enquiry held against the petitioner is vitiated due to violation of the rules of natural justice and non-application of mind. She emphasized that while holding the petitioner guilty of the misconduct alleged against him, the Enquiry Officer overlooked documentary evidence produced by him in the form of voters' list, identity card, certificate of Municipal Corporation, ration card, etcetera, which clinchingly show that he was a resident of Gujarat and argued that failure of the Enquiry Officer to consider the evidence produced by the petitioner should be treated sufficient for nullifying the order of dismissal. Learned Counsel then submitted that the Domicile Certificate produced by the petitioner cannot be treated as fake merely because the same was not recorded in the office of Deputy Commissioner of Police, Special Branch, Ahmedabad City.

4. Shri S.S. Varma, learned Additional Standing Counsel for the Central Government defended the dismissal of the petitioner by arguing that the finding of guilty recorded by the Enquiry Officer does not suffer from any legal infirmity. Shri Varma emphasised that for being treated as a domicile of the State of Gujarat, the petitioner should have resided in that State for at least ten years and argued that fake character of the Domicile Certificate produced by the petitioner in 1988 is proved from the fact that till 1983, he was a resident of State of Uttar Pradesh and passed 10th class examination from a school situated in that State.

5. I have thoughtfully considered the respective submissions and carefully scanned the record.

6. It is settled law that a writ of certiorari can be issued against an order passed by the Subordinate Court or Tribunal or a quasi-judicial authority if the same is without jurisdiction or is in excess of the jurisdiction or is violative of the rules of natural justice or is vitiated by an error of law apparent on the face of the record. To put it differently, the High Court can issue a writ of certiorari if it is found that the order under challenge has been made by the Court or Tribunal or quasi-judicial which did not have the jurisdiction to pass such order or where such Court, Tribunal or Authority has failed to exercise the jurisdiction vested in it or where the action complained of has been taken in disregard of rules of natural justice. A writ of certiorari can also be issued if it is shown that while passing the order under challenge the Subordinate Court, Tribunal or quasi-judicial authority ignored legally admissible evidence or took into consideration inadmissible evidence or overlooked relevant material or the order is based on extraneous consideration/factors. However, a writ Court cannot sit in appeal over the orders of the Subordinate Court, Tribunal or quasi-judicial authority and interfere with the findings and conclusions recorded by such Court, Tribunal or Authority merely because on a re-appreciation of evidence different finding or conclusion is possible. The writ Court cannot go into sufficiency and adequacy of evidence which may have been relied by the Subordinate Court, Tribunal or quasi-judicial authority for reaching a particular finding or conclusion.

7. In *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, , the Supreme Court considered the High Courts' power to issue a writ of certiorari and held:

A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or tribunals: these are cases where orders are passed by inferior Courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.

The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

A finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court.

8. In *Surya Dev Rai Vs. Ram Chander Rai and Others*, , the Supreme Court considered the scope of Articles 226 and 227 of the Constitution of India and laid down the following propositions:

(i) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate Court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(ii) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a Court of appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(iii) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English Courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate Courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate Court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate Court as the Court should have made in the facts and circumstances of the case.

(iv) The parameters for exercise of jurisdiction under Article 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less

than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where "a stitch in time would save nine". At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the Judge.

9. At this stage, it is also appropriate to mention that the scope of judicial review of disciplinary action taken against the delinquent employees is extremely limited. The Court can interfere with the punishment only if it is shown that the action taken by the employer is vitiated due to violation of the rules of natural justice and such violation has caused prejudice to the delinquent or that the finding of guilty recorded by the enquiring authority and/or disciplinary authority is based on no evidence or that such finding is based on extraneous or irrelevant factors or that the punishment is totally arbitrary or shockingly disproportionate to the misconduct found proved. The Court cannot sit in appeal over the finding recorded by the concerned authority and on a re-appreciation/reevaluation of evidence produced during the enquiry, it is possible to form a different opinion. Similarly, the Court cannot interfere with the punishment merely because it feels that a more compassionate or lenient view could have been taken by the Disciplinary Authority. In this connection, we may usefully refer to the judgments of the Supreme Court in *State of Orissa Vs. Bidyabhusan Mohapatra*, *State of Andhra Pradesh Vs. Sree Rama Rao*, *Railway Board Representing The Union of India (UOI) Vs. Niranjan Singh*, *The State of Madras Vs. G. Sundaram*, *State of Andhra Pradesh and Others Vs. Chitra Venkata Rao*, *B.C. Chaturvedi Vs. Union of India and others*, and *Apparel Export Promotion Council Vs. A.K. Chopra*.

10. In the light of the above, I shall now consider whether the enquiry held against the petitioner is vitiated due to violation of the rules of natural justice and the order of punishment is liable to be nullified on that ground. A careful reading of report dated 20-3-1997 shows that the Enquiry Officer considered the entire evidence produced by the parties and then held that the charge levelled against the delinquent is proved. He referred to letters dated 8-2-1989 and 24-12-1996 sent by Deputy Commissioner of Police, Special Branch, Ahmedabad City and Additional Commissioner of Police, Special Branch, Ahmedabad City respectively (these documents were produced by the departmental witness) and concluded that the charge of producing fake Domicile Certificate is established against the petitioner. The Enquiry Officer also considered the photostat copies of

voters" list, identity card, State Labour Insurance Scheme, ration card and certificate issued by Municipal Corporation of Ahmedabad (all these documents were produced by the petitioner) and held that the same were not sufficient to disprove the fake character of the Domicile Certificate. It is thus evident that the finding recorded by the Enquiry Officer is based on a correct and comprehensive evaluation of the evidence produced before him and learned Counsel's criticism of the enquiry report cannot but be termed as unfounded.

11. The argument of Smt. Suvarna Kurnari that documentary evidence produced by her client is sufficient to establish that on the date of selection, he was a resident of the State of Gujarat sounds attractive but lacks merit. At the cost of repetition, I consider it apposite to mention that till 1983, the petitioner was a native of Uttar Pradesh and passed 10th class examination from a school situated in District Ajamgarh. Therefore, on the basis of his alleged stay in the State of Gujarat for five years only, the petitioner could not be treated as domicile of that State.

12. Before concluding, I deem it proper to mention that it is neither the pleaded case of the petitioner nor the learned Counsel argued that reports sent by Deputy Commissioner of Police, Special Branch, Ahmedabad City and Additional Commissioner of Police, Special Branch, Ahmedabad City were biased or that the officers concerned had furnished false information regarding the Domicile Certificates. Therefore, there is no valid ground or justification for this Court's interference with the conclusion recorded by the Enquiry Officer, which was accepted by the Disciplinary Authority that the petitioner had obtained employment by producing fake Domicile Certificate.

13. No other point has been argued.

14. In the result, the writ petition is dismissed

15. As a sequel to dismissal of the writ petition WPMP No. 20979 of 1998 filed by the petitioner for interim relief is also dismissed.